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CONFESSION PROCURED THROUGH DECEPTION.

In the recent case of *People of the State of New York v. William Scott, N. Y. Law Journal,* Vol. XLI, No. 28, the Court of Appeals of the State of New York again helped lay the ghost of that theory by whcih confessions were sought to be avoided not because there was a legal ground for doing so but because of the moral ground.

On a trial for homicide the defendant's confession, which was received in evidence, had been obtained in the manner following: The witness, one of defendant's neighbors, after going to the jail in which defendant was confined, proposed that they should be handcuffed together and go into the woods where the deceased had been last seen alive. The witness promised the defendant that if he (the defendant) would point out the place where the body was concealed, he should be released by the witness and allowed to escape. To this the defendant agreed; and they went to the woods, handcuffed together. On their journey, the sheriff who was accompanying the witness, drew from the defendant further details of the crime. Before discovering the body the defendant demanded that he be released, but instead he was taken back to jail. The transaction throughout was secretly aided by the sheriff and was consented to by the district attorney. The Court of Appeals confirmed the lower courts in holding that there had been no error committed in receiving evidence of the confession. See *Code of Crim. Pro.,* Sec. 395. The sheriff and witness

had gone to the district attorney and asked if there were any objection to the scheme being carried out. He had replied, "I do not believe you can do any such thing. If you can, it is all right."

A few cases in different jurisdictions question the admissability of evidence obtained by the aid of a confession improperly obtained. The authorities appear to be very conflicting as to the admissability of a confession otherwise inadmissable, where facts disclosed thereby are found to be true, some holding that the entire confession is thereby rendered admissable, some that only the part relating to such facts is admissable. Almost all courts however agree that the facts discovered by aid of the confession are themselves admissable and that evidence is also admissable to show they were discovered in consequence of the confession. There are to be found a few statements to the effect that if the confession was obtained by criminal violence the facts discovered might not be admissable, and some expressions to the effect that if the confession was improperly obtained by violence or otherwise, the facts discovered by means thereof ought not to be admitted.

In *State v. Roberts.* 12 N. C. (1 Dev. L.) 259, there is an *obiter dictum* in which the judge declared that if it were not for authority, he should say that where the facts had been obtained by extorted confessions, such facts may be proved, but nothing which the prisoner said in regard thereto, and also if it were not for the same authority he should say that not even the fact of recovery by means of the confession would be admissable.

In *Jordan v. State,* 32 Miss. 382, the court stated that the rule protecting against a confession extorted by lawless violence protected the accused against testimony which could only be discovered or made available through the instrumentality of such a confession. However, as physical violence was the basic cause of the above utterance, the rule as stated there is in nowise applicable to the case before us. *State v. William,* Scott, *supra.*

So, too, in *Rusher v. State,* 94 Ga. 363, the court held that if criminal violence. such as a whipping, were used, such evidence as was discovered through such means might be inadmissable, as one crime ought not to be committed to discover another.

Yet, there can be no serious doubt to the proposition that the great weight of authority is to the effect that evidence obtained by aid of a confession is admissable, if relevant, regardless of the manner in which the confession was obtained. Almost the only exception to the admissability of such evidence is when the thing discovered is not identified even here, however, some courts hold that the confession itself sufficiently identifies the property and in other cases the question of identity does not seem to have been raised. *Belote v. State,* 36 Miss. 96; *U. S. v. Richard, 2 Cranch C. C.* 439, *Fed. Cas.* No. 16,154.

In Harvey's case, 2 East. C. L. 658, Lord Eldon said that when the knowledge of any fact was obtained from a prisoner under such a promise as excluded the confession from being given in evidence, he should direct an acquittal unless the fact itself, which was proven, would have been sufficient to warrant the conviction without the confession.

The principle upon which a confession is treated as sometimes inadmissable is that under certain conditions it becomes untrustworthy as testimony. This principle is also to be found in the common law. Parke B., famed for his knowledge and application of the rules of evidence, once stated: "Unless the person attempting to obtain a confession has the power, apparent to the confessor, to carry out the threat or the promise, there is no reason for treating the inducement as likely to produce an untrue confession. In such a case it is not due to inducement, but to the confessor's own discretion. In all cases inquiry should be made whether the defendant spoke through fear or in the expectation of immunity. The test seems to be whether the prisoner had any inducement to tell a falsehood against himself or felt compelled to speak for any reason when he preferred to remain silent. *Balto v. People,* 80 N. Y. 484.

In *People v. White,* 176 N. Y. 349, where the confession to the undersheriff was made to him not as a public officer, but as a supposed friend, the confession was admitted.

In the case of *Cox v. People,* 80 N. Y. 500, it was held that it is not sufficient to exclude a confession by a prisoner, as we have formerly held "that he was under arrest at the time or that it was made to the officer in whose custody he was or in answer to questions put to him, or that it was made under the hope or promise of a benefit of a collateral nature."

Section 395 of the *Code of Criminal Procedure of New York* provides that "a confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats or unless made upon a stipulation of the district attorney that he shall not be prosecuted therefor. . . ." The promise of a neighbor witness, even conceded to be an agent of the district attorney, to allow the prisoner to escape while in the woods, can hardly be construed to come within the provision, . . . "unless made upon a stipulation of the district attorney that he shall not be prosecuted therefor. . . ." The New York courts did not think the case under discussion to be included either within the meaning or spirit of the legislative act alone, and to the same effect have been the interpretations of similar legislative enactments by the great majority of the various State courts in cases of the same circumstances.

The spirit which prompted the court to speak in *People v. Wentz,* 37 N. Y. 303, was, doubtless, that same spirit which prompted the court in *People v. William Scott, supra,* to make use in a specific instance of that spirit of the law which, while jealous that no legal disadvantage be imposed upon an accused, is also jealous that justice be done. Well did the court in *People v. Wentz. supra,* summarize that spirit when they stated that "cautious and hesitating as courts have always been in regard to confessions made by a person when under arrest to those in authority over him, they have not gone so far as to exclude them, simply because they were procured by deception, provided they were voluntarily made."